

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

**CASE NO.: 2:23-cv-01495-JHC**

**PLAINTIFFS' REPLY  
REGARDING PLAINTIFFS'  
MOTION TO SEAL AND  
PLAINTIFFS' RESPONSE TO  
AMAZON'S MOTION TO SEAL**

Pursuant to Local Civil Rule 5(g), Plaintiffs respectfully submit this reply regarding Plaintiffs' Motion to Seal (Dkt. #199) and Plaintiffs' Response to Amazon's Motion to Seal (Dkt. #220).

Plaintiffs respectfully oppose Amazon's request to seal all of Exhibit B to the Declaration of Emily K. Bolles in Support of Plaintiffs' Motion to Compel Production of Documents Related to Spoliation ("Bolles Declaration") (Dkt. #201-1), and in the alternative, all of Exhibit B outside of the first two pages of the document. Amazon's Response to Plaintiffs' Motion to Seal, Dkt. #221 at 3, 6. Amazon's confidentiality concerns can be addressed by sealing the names of individuals not employed by Amazon, the names of Amazon executive assistants, and certain

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subject matter descriptions that do not appear to be relevant to this case and are detailed enough that they could conceivably prejudice Amazon or third parties. Plaintiffs do not oppose sealing those portions of Exhibit B, but Amazon has not shown good cause to permanently seal Exhibit B in its entirety.

Following Amazon's choice to publicly disclose a previously nonpublic FTC investigation in Amazon's Opposition to Plaintiffs' Motion to Compel (Dkt. #223), Plaintiffs withdraw their request to permanently seal portions of Exhibits B-E, G and L filed in connection with the Bolles Declaration (Dkt. # 201-1). Plaintiffs do not oppose Amazon's request to permanently seal portions of Exhibit E and Exhibits 20, 21, 22 and 23 filed in connection with the Declaration of Kosta S. Stojilkovic in Support of Amazon's Opposition to Plaintiffs' Motion to Compel Production of Documents ("Stojilkovic Declaration") (Dkt. # 224-225). Finally, Plaintiffs request that the Court permanently seal a portion of Exhibit 13 to the Stojilkovic Declaration (Dkt. #224-225) that refers to a nonpublic FTC investigation.

### **ARGUMENT**

#### **I. AMAZON HAS NOT SHOWN GOOD CAUSE TO PERMANENTLY SEAL EXHIBIT B IN ITS ENTIRETY.**

"Historically, courts have recognized a 'general right to inspect and copy public records and documents, including judicial records and documents.'" *Kamakana v. City & Cnty. Of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n.7 (1978)). Accordingly, when a court considers a request to seal, "a strong presumption in favor of access is the starting point." *Id.* at 1178 (internal quotation marks and citations omitted); *see also* W.D. Wash LCR 5(g). To overcome this presumption in connection with a non-dispositive motion, the party seeking to seal a document must make a "particularized showing of good cause." *San Jose Mercury News, Inc. v. U.S. Dist. Ct. – N. Dist. (San Jose)*, 187

1 F. 3d 1096, 1103 (9th Cir. 1999); *see* W.D. Wash. LCR 5(g)(3)(B). “Broad allegations of harm,  
2 unsubstantiated by specific examples of articulated reasoning” are insufficient to justify sealing.  
3 *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992) (quoting *Cipollone v.*  
4 *Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d. Cir. 1986). Even if good cause is shown to seal  
5 portions of a document, “courts prefer ‘limited and clear’ redactions, if possible” rather than  
6 sealing a document in its entirety. *Fernandez v. Corelogic Credco, LLC*, 2023 WL 11445613, at  
7 \*1 (S.D. Cal, Mar. 8, 2023) (quoting *Kamakana*, 447 F.3d at 183).

8 Exhibit B is a high-level log of Signal screenshots for certain Amazon executives whose  
9 files were searched in connection with Plaintiffs’ pre-Complaint investigation. Other individuals  
10 are identified on the log only insofar as they were communicating with these executives through  
11 Signal. The log identifies the date of each communication, the participants, and the participants’  
12 disappearing messages (“DM”) settings, including whether DM settings were changed during a  
13 conversation. For some entries, the log contains a high-level description of the subject matter of  
14 the communication.

15 Amazon is seeking to permanently seal all thirty-five pages of Exhibit B, or in the  
16 alternative, the thirty-three pages of Exhibit B that contain log entries. However, Amazon’s  
17 statement only outlines broad allegations of harm if Exhibit B is made public and does not make  
18 any particularized showing that the disclosure of Amazon’s Signal log would harm Amazon or  
19 impact any individual privacy interests.

20 To address Amazon’s concerns, Plaintiffs have proposed narrow redactions to Exhibit B  
21 that would seal the names of individuals not employed by Amazon, the names of Amazon  
22 executive assistants, and certain subject matter descriptions that do not appear to be relevant to  
23

1 this case and are detailed enough that they might conceivably prejudice Amazon or third parties.<sup>1</sup>  
 2 Those proposed redactions are highlighted in pink in the version of Exhibit B Plaintiffs are filing  
 3 in connection with this reply brief. The rest of Exhibit B should be made public.

4 Amazon's argument that "the vast majority of the entries in Exhibit B are plainly and  
 5 indisputably of no relevance to this litigation," Response 6, Dkt #221, misses the point.  
 6 Amazon's Signal log shows when and how frequently senior Amazon executives used Signal  
 7 and shows that they used Signal to discuss business matters. The log also shows how Amazon  
 8 executives turned disappearing messages on and off, and how they changed the timer setting for  
 9 disappearing messages. That information is directly relevant to Plaintiffs' Motion to Compel.

10 Amazon contends that Exhibit B, if made public, "would reveal potentially sensitive  
 11 business information and strategies." Response 4-5, Dkt #221. Amazon provides no support for  
 12 this claim, much less a "particularized showing of good cause." *See* Fitzgerald Decl. ¶ 3, Dkt.  
 13 #222.

14 Amazon claims that Exhibit B would "reveal[] the communication patterns and  
 15 potentially sensitive areas of business focus of various Amazon executives." Response 5, Dkt.  
 16 #221. However, it is unclear how any generalized "patterns" of executives' communications  
 17 would cause any particularized harm to Amazon or embarrassment to its employees, especially  
 18 given that most of the subject matter descriptions in the log are very broad. Similarly, the log  
 19 offers little insight into the "potentially sensitive areas of business focus for various Amazon  
 20 executives." For example, there is nothing sensitive about the fact that Amazon executives

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 23 <sup>1</sup> Plaintiffs previously met and conferred with Amazon about Amazon's request to seal Exhibit B, and Amazon took  
 24 the position that Exhibit B should be sealed in its entirety. *See* Bolles Decl. ¶ 7, Dkt. #200. Amazon argues in its  
 response that any targeted redactions "will invite speculation about whose names appear under redacted entries."  
 Amazon's Response to Plaintiffs' Motion to Seal ("Response") 7, Dkt. #221.

1 communicate about public relations and human resources issues. *See* Response 5, Dkt #221.  
2 Additionally, dozens of log entries do not include a subject matter description at all, and instead  
3 only list the conversation participants and when DM settings were changed. Amazon’s request to  
4 seal Exhibit B in its entirety is not “narrowly tailored to confidential or proprietary information”  
5 and does not meet the good cause standard for sealing. *See Apple Inc. v. Samsung Elecs. Co.*,  
6 2013 WL 412864, at \*2 (N.D. Cal., Feb. 1, 2013); *see also Skky, LLC v. Facebook, Inc.*, 191 F.  
7 Supp. 3d 977, 981 (D. Minn. 2016) (denying a motion to seal when the document was not the  
8 “type of sensitive information that might typically be subject to an order to seal, such as financial  
9 data, proprietary or trade secret information, or personal health details”).

10 Amazon’s argument that the entire Signal log should be sealed because some  
11 conversations “relate to sensitive public relations and human resources issues” should not carry  
12 any weight. Response 5, Dkt #221. The subject matter descriptions in the log are sufficiently  
13 vague that it would be impossible for the public to discern the details of any conversations. The  
14 mere fact that Amazon executives communicate about public relations and personnel issues is  
15 not confidential, as illustrated by the fact that Amazon publicly describes those categories of  
16 communications in its brief. Response 5, Dkt. #221.

17 Finally, Amazon states that it is concerned that “[a]ny partial unsealing” of Signal log  
18 entries “will invite speculation about whose names appear under redacted entries, both from the  
19 public and from other Amazon employees.” Response 7, Dkt. #221. It is not clear that Amazon  
20 has a cognizable interest in shielding Amazon information from Amazon employees. However,  
21 leaving that issue aside, these types of concerns about potential speculation do not constitute  
22 good cause to maintain a document under seal. *Bangert v. Cnty. of Placer*, 2019 WL 358518, at  
23 \*5 (E.D. Cal Jan. 29, 2019) (“Defendants’ argument that publicly disclosing the list of

documents sought could fuel speculation as to what documents do and do not exist is not a ‘particularized showing’ that public disclosure of this email would cause ‘annoyance, embarrassment, oppression, or an undue burden.’”) (citation omitted).

## **II. PLAINTIFFS WITHDRAW THEIR REQUEST TO PERMANENTLY SEAL PORTIONS OF EXHIBITS B-E, G, AND L.**

Plaintiffs withdraw their request to permanently seal portions of Exhibits B through E, G, and L, which were filed with the Bolles Declaration (Dkt #201-1). Certain portions of those documents referred to an FTC investigation that was not public at the time of Plaintiffs’ filing. Amazon has publicly disclosed the existence of that investigation in its Opposition to Plaintiffs’ Motion to Compel (Dkt. #223). As a result, the FTC withdraws its request to maintain the relevant portions of those documents under seal.

## **III. THE COURT SHOULD PERMANENTLY SEAL PORTIONS OF EXHIBIT 13.**

Plaintiffs request that the Court permanently seal the subject line of Exhibit 13 filed with the Stojilkovic Declaration (Dkt. # 224-225) because it refers to a nonpublic FTC investigation, which the FTC generally does not disclose as a matter of policy. Policy Concerning Disclosures of Nonmerger Competition and Consumer Protection Investigations, 63 Fed. Reg. 63477 (Nov. 13, 1998). Pursuant to longstanding FTC policy, the FTC discloses investigations only pursuant to certain limited exceptions that are not applicable here. These confidentiality considerations are good cause to maintain this portion of Exhibit 13 under seal and there are no less restrictive alternatives to sealing portions of this exhibit that refer to a nonpublic FTC investigation. Amazon does not oppose this proposed redaction. Amazon’s Motion to Seal Exhibits to Opposition to Plaintiffs’ Motion to Compel 5, Dkt. #220.

IV. **PLAINTIFFS DO NOT OPPOSE AMAZON’S REQUEST TO PERMANENTLY SEAL PORTIONS OF EXHIBIT E AND EXHIBITS 20, 21, 22 AND 23.**

Plaintiffs do not oppose Amazon’s request to permanently seal portions of Exhibit E filed with the Bolles Declaration (Dkt. #201-1) or Amazon’s request to permanently seal Exhibits 20-23 filed with the Stojilkovic Declaration (Dkt. #224-225).

**CONCLUSION**

Plaintiffs respectfully request that the Court enter the attached Proposed Order.

Dated: May 23, 2024

*I certify that this brief contains 1660 words, in compliance with LCR 7(e)(4).*

Respectfully submitted,

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